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10/045,503	11/07/2001	John Starr	3660P063	9984

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EXAMINER

WU, RUTAO

ART UNIT	PAPER NUMBER
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3639

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/045,503	Applicant(s) STARR ET AL.	
	Examiner Rob Wu	Art Unit 3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 11 2006 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. The applicant amended claim 1 to recite "upon completion of bidding for the plurality of lots, generating at least a first and second optimal solution from the bids in the database without user interaction, the first optimal solution having a different

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number of suppliers than the second optimal solution.” Looking at the specification provided by the applicant, it states on page 7 that a minimum amount of money to be paid was chosen by the buyer so that the number of suppliers could be reduced from eleven bidders. The best optimal solution was calculated using the minimum price of \$5,245,434 and the lowest bid for each lot for five bidders as shown in Tables 2 and 3. From the applicant’s specification, it can be seen that the best optimal solution is determined with user interaction (the buyer choosing the minimum amount of money of bidders can be limited). Therefore, the specification provided does not provide support for the claim limitation as recited in claim 1.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over French et al in view of Li et al in further view of *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958).

Referring to claim 1:

A computer-implemented method for selecting an optimal balance between direct cost and a number of suppliers comprising:

- soliciting bids from a plurality of suppliers for a plurality of lots;

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French states in his application that consumer submits a request for a price quote on a certain product to an electronic staging area [0006].

- receiving at least one bid from a supplier for each lot;

French states in his application that the request for quote is forwarded to at least two carriers who compete with one another during a specified auction period to provide the consumer with the best price quote for the product [0006].

- storing the bids from each supplier in a database; and

French states in his application an electronic medium such as a computer, along with the available databases that will maintain the RFQ system and method [0023].

- Upon completion of bidding for the plurality of lots, generating at least a first and second optimal solution from the bids in the database, the first optimal solution having a different number of suppliers than the second optimal solution.

French states in his application multiple phases to the auction. There could be N initial bids in phase I, at the end of phase I, the buyer would choose a number of finalists to go on to phase II to continue the bidding to further narrow down the number of carriers [0040]. Therefore, the end of phase I would be the first optimal solution, and the end of phase II would be the second optimal solution having a different number of bidders.

French however does not disclose that the two solutions are generated at the close of the auction. Li et al disclose that after the close of the auction the auction management software presents to the buyer multiple optimal award schedules based on the different private buyer constraints as selected by the buyer. [0064], [0065]

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify French's invention to allow multiple choices for the consumer at the end of the auction to ensure that the consumers can pick the best suppliers as needed based on the conditions that are most important to the consumers.

Neither French or Li et al disclose that multiple optimal award schedules can be determined without user interaction. However, *In re Venner* established that it would have been obvious to one having ordinary skill in the art at the time the invention was made to automate a manual activity. The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to automate the generation of optimal award schedules disclosed in Li et al without any user interaction. The auction system can store the private buyer constraints specified by the buyer and apply the constraints without the buyer's interaction. Li et al would have been motivated to automate the generation to provide convenience to the users and also reduce accidental user error.

Referring to claim 2:

The method of claim 1 wherein the generating comprises:

Inputting the bids into an optimization routine, including:

- selecting the number of suppliers for each optimal solution,

French states in his application that for each phase of the auction, the number of approved carriers are chosen by the buyer [0040].

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- determining lowest bids received from the number of suppliers for the lots for each optimal solution,

French states in his application that the customer would select the carriers with the most competitive quotes at the end of each phase, and that either the lowest quote or the highest quote as the most competitive quote, depending on the good or service [0047].

- calculating a direct cost from the lowest bids received from the number of suppliers for each optimal solution, and

French states in his application that the customer would select the lowest quote as the most competitive quote [0047]. In this case, the optimal solution includes one carrier, and the direct cost would be the lowest quote. In a case when the optimal solution includes multiple carriers, then the direct cost would be the total of the lowest quotes.

- providing each optimal solution to a buyer.

French states in his application that the RFQ system is configured so that quotes could be viewed at the customer interface [0043].

Referring to claim 3:

The method of claim 1 wherein the generating comprises:

- choosing a minimum cost; and

French states in his application that the customer could indicate a "ceiling quote", or a maximum price above which the customer would not want to receive a quote on the desired product. Also, the customer could indicate a "floor quote", or a price below which the customer would not want to receive a quote on a certain product [0034].

- determining the optimal solution with a direct cost being at least the minimum cost.

French states in his application the broker interface would pre-screen all quotes to ensure that each was at or below the specified ceiling quote, or alternatively, was at or above the specified floor quote [0034]. Therefore, all the competitive quotes would be at least the minimum cost in the case of a floor quote.

Referring to claim 4:

The method of claim 1 wherein the storing comprises:

- removing the bids from at least one undesired supplier.

French states in his application that after phase I, the buyer would select a number of finalists to go on to phase II [0040]. Thus removing the bids from at least one undesired supplier.

Referring to claim 5:

The method of claim 4 wherein the generating comprises:

- providing the optimal solution with lowest bids from the suppliers other than the at least one undesired supplier.

French states in his application a phase II of the auction, which include only the chosen suppliers [0040].

Referring to claim 6:

The method of claim 1 wherein the storing comprises:

- choosing the bids from at least one preferred supplier.

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French states in his application at the end of phase II, the buyer would select the carrier with the either the lowest quote or the highest quote as the most competitive quote, depending on the good or service [0047].

Referring to claim 7:

The method of claim 6 wherein the generating comprises:

- providing the optimal solution with lowest bids from the at least one preferred supplier for the lots on which the at least one preferred supplier bid lower than other suppliers and lowest bids from the other suppliers for the lots on which the at least one preferred supplier did at least one of not bid and not bid the lowest bid.

The examiner understood the claim as: providing the optimal solution made up of the bids from the preferred supplier for the lots which the preferred supplier bid the lowest and the bids from other suppliers for the lots on which the preferred supplier either did not bid or not have the lowest bid.

French states in his application that at the end of phase I, the buyer will chose a number of finalist carriers who had submitted the best initial quotes to go on to phase II [0040].

The carrier with the lowest bid will be included in the finalist carriers. If the carrier did not bid or was not among the lowest bidders, then he would not be included in the finalist carriers.

Referring to claim 8:

The method of claim 1 wherein the generating comprises:

- ranking the bids in accordance with cost.

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French states in his application that an optional feature of his invention would allow the customer to sort the quotes according to one or more parameters, such as for example, highest to lowest quote [0046].

Referring to claim 9:

The method of claim 1 wherein the soliciting comprises:

- identifying at least one of goods and services to be purchased.

French states in his application, the customer can consummate the transaction by submitting an actual purchase order for the product to the “winning” carrier [0047].

Referring to claim 10:

The method of claim 1 further comprising:

- display at least one of the first and second optimal solutions.

French states in his application that after the auction, the broker would post all the quotes submitted, which preferably would include the best or most competitive quote in the staging area [0047].

Referring to claim 11:

The method of claim 1 wherein the generating comprises:

- assigning an integer value to each lowest bid in each lot.

French states in his application that optional statistics could be posted by the broker with the winning quote [0047].

Referring to claim 12:

The method of claim 1 wherein the receiving comprises:

Submitting bids from

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- a first supplier that bid on at least one of a first lot, a second lot, a third lot and a fourth lot,
- a second supplier that bid on at least one of the first lot, the second lot, the third and the fourth lot,
- a third supplier that bid on at least one of the first lot, the second lot, the third lot, and the fourth lot; and
- a fourth supplier that bid on at least one of the first lot, the second lot, the third lot, and the fourth lot.

French states in his application the request for quote is forwarded to at least two carriers who compete with one another during a specified auction period to provide the consumer with the best price quote for the product [0006]. French further states, after the first quote was posted, a second carrier could choose to submit a second quote [0043].

Referring to claim 13:

The method of claim 12 wherein the generating comprises:

Calculating the first and second optimal solution, including

- the first optimal solution, having a first cost, for three suppliers, the first optimal solution listing the first supplier as a provider for at least one of the first, second, third and fourth lots and having a first cost, the third supplier as the provider for at least one of the first, second, third, and fourth lots, and the fourth supplier as the provider for at least one of the first, second, third and fourth lots; and

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French states in his application in phase I of the RFQ system that each carrier would submit its initial quote without knowing another carrier's quote [0037], and also may be allowed to update its quote after viewing the quotes submitted by other carriers[0039].

- the second optimal solution, having a second cost, for two suppliers, the second optimal solution listing the third supplier as the provider for at least one of the first, second, third, and fourth lots, and the fourth supplier as the provider for at least one of the first, second, third and fourth lots.

French states in his application that finalists from phase I are chosen to participate in phase II [0040]. The first carrier would transmit a first or open bid. Preferably more competitive than the initial quote submitted in phase I [0042]. After the first quote was posted, a second carrier could choose to submit a second quote [0043].

Referring to claim 14:

The method of claim 1 further comprising:

- selecting one of the optimal solutions.

French states in his application the customer can select one carrier in phase I and go with that carrier's quote on the product, obviating the need to proceed to Phase II altogether[0040]. Or after the completion of phase II, consummate the transaction by submitting an actual purchase order for the product to the "winning" carrier [0047].

Referring to claim 15:

A computer-implemented method for selecting an optimal balance between direct cost and a number of suppliers, comprising:

- identifying at least one of goods and services to be purchased;

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French states in his application, the customer can consummate the transaction by submitting an actual purchase order for the product to the “winning” carrier [0047].

- soliciting bids from a plurality of bidders for a plurality of lots;

French states in his application that consumer submits a request for a price quote on a certain product to an electronic staging area [0006].

- receiving at least one bid from a supplier for each lot;

French states in his application that the request for quote is forwarded to at least two carriers who compete with one another during a specified auction period to provide the consumer with the best price quote for the product [0006].

- storing the bids from each supplier in a database;

French states in his application an electronic medium such as a computer, along with the available databases that will maintain the RFQ system and method [0023].

Upon completion of bidding for the plurality of lots, inputting the bids into an optimization routine, including

- selecting the number of suppliers for at least a first and second optimal solution;

French states in his application that for each phase of the auction, the number of approved carriers are chosen by the buyer [0040].

- determining lowest bids received from the number of suppliers for the lots for each optimal solution;

French states in his application that the customer would select the carriers with the most competitive quotes at the end of each phase, and that either the lowest quote or the highest quote as the most competitive quote, depending on the good or service [0047].

- calculating a direct cost from the lowest bids received from the number of suppliers for each optimal solution;

French states in his application that the customer would select the lowest quote as the most competitive quote [0047]. In this case, the optimal solution includes one carrier, and the direct cost would be the lowest quote. In a case when the optimal solution includes multiple carriers, then the direct cost would be the total of the lowest quotes.

- displaying each optimal solution; and

French states in his application that the RFQ system is configured so that quotes could be viewed at the customer interface [0043].

- choosing one of the optimal solutions.

French states in his application the customer can select one carrier in phase I and go with that carrier's quote on the product, obviating the need to proceed to Phase II altogether[0040]. Or after the completion of phase II, consummate the transaction by submitting an actual purchase order for the product to the "winning" carrier [0047].

French however does not disclose that the two solutions are generated at the close of the auction. Li et al disclose that after the close of the auction the auction management software presents to the buyer multiple optimal award schedules based on the different private buyer constraints as selected by the buyer. [0064], [0065]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify French's invention to allow multiple choices for the consumer at the end of the auction to ensure that the consumers can pick the best suppliers as needed based on the conditions that are most important to the consumers.

Neither French or Li et al disclose that multiple optimal award schedules can be determined without user interaction. However, *In re Venner* established that it would have been obvious to one having ordinary skill in the art at the time the invention was made to automate a manual activity. The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to automate the generation of optimal award schedules disclosed in Li et al without any user interaction. The auction system can store the private buyer constraints specified by the buyer and apply the constraints without the buyer's interaction. Li et al would have been motivated to automate the generation to provide convenience to the users and also reduce accidental user error.

Referring to claim 16:

A system for selecting an optimal balance between direct cost and a number of suppliers comprising:

- a database for receiving and storing bid information from a plurality of suppliers for a plurality of lots; and

French states in his application an electronic medium such as a computer, along with the available databases that will maintain the RFQ system and method [0023].

- software for generating, upon completion of bidding from the plurality of lots, at least a first and second optimal solution from the bid information, the first optimal solution having a different number of suppliers than the second optimal solution.

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French states in his application an electronic medium such as a computer, along with the available databases, hardware and software that will program and maintain the RFQ system and method [0023].

French however does not disclose that the two solutions are generated at the close of the auction. Li et al disclose that after the close of the auction the auction management software presents to the buyer multiple optimal award schedules based on the different private buyer constraints as selected by the buyer. [0064], [0065]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify French's invention to allow multiple choices for the consumer at the end of the auction to ensure that the consumers can pick the best suppliers as needed based on the conditions that are most important to the consumers.

Referring to claim 17:

The system of claim 16 wherein the the bid information comprises at least one bid from a supplier for each lot.

French states in his application the request for quote is forwarded to at least two carriers who compete with one another during a specified auction period to provide the consumer with the best price quote for the product [0006]. French further states, after the first quote was posted, a second carrier could choose to submit a second quote [0043].

Referring to claim 18:

The system of claim 16 wherein the at least one of the first and second optimal solutions comprises a chosen supplier for each lot.

French states in his application that the customer would effectively choose the carriers to participate in the RFQ process and subsequent auction [0033]. Therefore, the optimal solutions include a chosen supplier.

Referring to claim 19:

A machine readable medium that selects an optimal balance between direct cost and a number of suppliers comprising:

- a first machine readable code that receives and stores bid information from a plurality of suppliers for a plurality of lots;

French states in his application an electronic medium such as a computer, along with the available databases that will maintain the RFQ system and method [0023].

- a second machine readable code that generates at least a first and second optimal solution from the bid information upon completion of bidding for the plurality of lots, the first optimal solution having a different number of suppliers than the second optimal solution; and

French states in his application an electronic medium such as a computer, along with the available databases, hardware and software that will program and maintain the RFQ system and method [0023].

- a third readable code that transmits the optimal solution to a buyer.

French states in his application that the customer interface shall be an electronic medium, and more preferably shall include a website on the internet accessible by a computer [0022].

French however does not disclose that the two solutions are generated at the close of the auction. Li et al disclose that after the close of the auction the auction management software presents to the buyer multiple optimal award schedules based on the different private buyer constraints as selected by the buyer. [0064], [0065]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify French's invention to allow multiple choices for the consumer at the end of the auction to ensure that the consumers can pick the best suppliers as needed based on the conditions that are most important to the consumers.

Neither French or Li et al disclose that multiple optimal award schedules can be determined without user interaction. However, *In re Venner* established that it would have been obvious to one having ordinary skill in the art at the time the invention was made to automate a manual activity. The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to automate the generation of optimal award schedules disclosed in Li et al without any user interaction. The auction system can store the private buyer constraints specified by the buyer and apply the constraints without the buyer's interaction. Li et al would have been motivated to automate the generation to provide convenience to the users and also reduce accidental user error.

Referring to claim 20:

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The machine readable medium of claim 19 wherein the bid information comprises at least one bid from a supplier for each lot.

French states in his application the request for quote is forwarded to at least two carriers who compete with one another during a specified auction period to provide the consumer with the best price quote for the product [0006]. French further states, after the first quote was posted, a second carrier could choose to submit a second quote [0043].

Referring to claim 21:

The machine readable medium of claim 19 wherein at least one of the first and second optimal solutions comprise a chosen supplier for each lot.

French states in his application that the customer would effectively choose the carriers to participate in the RFQ process and subsequent auction [0033]. Therefore, the optimal solutions include a chosen supplier.

Referring to claim 22:

The machine readable medium of claim 19 wherein the bid information comprises:

- at least one bid on a first, second, third, and fourth lot from a first supplier; at least one bid on the first, second, third, and fourth lots from a second supplier, at least one bid on the first, second, third, and fourth lots from a third supplier, and at least one bid on the first, second, third, and fourth lots from a fourth supplier.

French states in his application the request for quote is forwarded to at least two carriers who compete with one another during a specified auction period to provide the

consumer with the best price quote for the product [0006]. French further states, after the first quote was posted, a second carrier could choose to submit a second quote [0043].

Referring to claim 23:

The machine readable medium of claim 22 wherein the first and second optimal solution comprises:

- the first optimal solution, having a first cost, for three suppliers, the first optimal solution listing the first supplier as a provider for at least one of the first, second, third and fourth lots and having a first cost, the third supplier as the provider for at least one of the first, second, third, and fourth lots, and the fourth supplier as the provider for at least one of the first, second, third and fourth lots; and

French states in his application in phase I of the RFQ system that each carrier would submit its initial quote without knowing another carrier's quote [0037], and also may be allowed to update its quote after viewing the quotes submitted by other carriers[0039].

- the second optimal solution, having a second cost, for two suppliers, the second optimal solution listing the third supplier as the provider for at least one of the first, second, third, and fourth lots, and the fourth supplier as the provider for at least one of the first, second, third and fourth lots.

French states in his application that finalists from phase I are chosen to participate in phase II [0040]. The first carrier would transmit a first or open bid. Preferably more competitive than the initial quote submitted in phase I [0042]. After the first quote was posted, a second carrier could choose to submit a second quote [0043].

Conclusion

7. Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Wu whose telephone number is (571)272-3136.

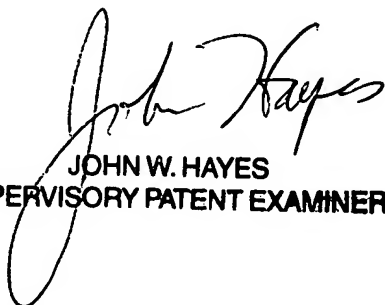
The examiner can normally be reached on Mon-Fri 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571)272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rw


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER